

# Calendar No. 606

113TH CONGRESS  
2D SESSION

# S. 1744

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2013

Mr. TESTER (for himself, Mr. PORTMAN, Mrs. McCASKILL, Mr. BEGICH, Mr. BAUCUS, Mr. NELSON, Mr. JOHNSON of Wisconsin, and Ms. AYOTTE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 20, 2014

Reported by Mr. CARPER, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1   **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Security Clearance Ae-  
3   countability, Reform, and Enhancement Act”.

4   **SEC. 2. DEFINITIONS.**

5       In this Act—

6           (1) the term “administrative leave”—

7              (A) means a period of administratively au-  
8         thorized absence from official duties by an em-  
9         ployee of an agency without loss of pay or  
10      charge to the leave account of the employee;  
11      and

12              (B) does not include the absence of an em-  
13         ployee of an agency who is performing officially  
14         sanctioned duties away from the usual work site  
15         or that are different from the regular duties of  
16         the employee;

17           (2) the term “agency” has the meaning given  
18         that term in section 3001 of the Intelligence Reform  
19         and Terrorism Prevention Act of 2004 (50 U.S.C.  
20         3341);

21           (3) the term “appropriate congressional com-  
22         mittees” means—

23              (A) the Committee on Homeland Security  
24         and Governmental Affairs and the Select Com-  
25         mittee on Intelligence of the Senate; and

(B) the Committee on Oversight and Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives;

5                             (4) the term "background investigation" means  
6                             any investigation required for the purpose of deter-  
7                             mining whether an individual may be appointed to,  
8                             or continue to occupy, a position, as an employee or  
9                             contractor of an agency, that requires its occupant  
10                          to have access to classified information or secure  
11                          government facilities;

12                         (5) the term "covered contract" means a con-  
13                         tract—

(A) between an agency and a prime contractor:

(B) between a prime contractor and a subcontractor, and

18 (C) between subcontractors.

19 (6) the term "debar"—

(A) means to prohibit an individual from being appointed to, or continuing to occupy, a position, as a contractor of an agency, that requires its occupant to supervise, conduct, or otherwise administer background investigations; and

(B) shall be construed within the parameters and scope of debarment under subpart 9.4 of part 9 of title 48, Code of Federal Regulations, or any successor thereto;

(7) the term "Director" means the Director of the Office of Personnel Management;

(8) the term "prime contractor" means a person who enters into a contract with an agency;

(9) the term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract with an agency; and

(10) the term "terminate" means to prohibit an individual from being appointed to, or continuing to occupy, a position, as an employee of an agency, that requires its occupant to supervise, conduct, or otherwise administer background investigations.

18 SEC. 3. TERMINATION AND DEBARMENT OF INDIVIDUALS  
19 INVOLVED IN MISCONDUCT AFFECTING THE  
20 INTEGRITY OF THE BACKGROUND INVESTIGATIONS PROGRAM OF THE OFFICE OF  
21 PERSONNEL MANAGEMENT.

23       (a) TERMINATION.—The Director shall terminate an  
24 individual employed by the Office of Personnel Manage-  
25 ment if the Director determines, based upon a preponder-

1     ance of the evidence, that the individual was intentionally  
2     involved in misconduct affecting the integrity of the back-  
3     ground investigations program of the Office of Personnel  
4     Management, including—

5                 (1) falsification of a background investigation  
6     report;

7                 (2) fraud relating to a background investigation  
8     report; or

9                 (3) other serious misconduct that compromises  
10    the integrity of a background investigation report.

11         (b) DEBARMENT.—The Director shall debar an indi-  
12    vidual employed or contracted by a person under contract  
13    with the Office of Personnel Management if the Director  
14    determines, based upon a preponderance of the evidence,  
15    that the individual was intentionally involved in mis-  
16    conduct that has the potential to affect the integrity of  
17    the background investigations program of the Office of  
18    Personnel Management, including—

19                 (1) falsification of a background investigation  
20     report;

21                 (2) fraud relating to a background investigation  
22     report; or

23                 (3) other serious misconduct that compromises  
24    the integrity of a background investigation report.

25         (c) SUSPENSION.—

1                   (1) **IN GENERAL.**—The Director shall suspend  
2       an individual employed or contracted by a person  
3       under contract with the Office of Personnel Manage-  
4       ment if the Director determines, based upon a pre-  
5       ponderance of the evidence, that an investigation is  
6       required to determine whether the individual was in-  
7       tentionally involved in misconduct affecting the in-  
8       tegrity of the background investigations program of  
9       the Office of Personnel Management, including—

10                   (A) falsification of a background investiga-  
11       tion report;

12                   (B) fraud relating to a background inves-  
13       tigation report; or

14                   (C) other serious misconduct that com-  
15       promises the integrity of a background inves-  
16       tigation report.

17                   (2) **DURATION OF SUSPENSION.**—An individual  
18       suspended under paragraph (1) shall remain sus-  
19       pended until such time that the Director determines  
20       that the individual was not intentionally involved in  
21       misconduct affecting the integrity of the background  
22       investigations program of the Office of Personnel  
23       Management.

24                   (d) **ADMINISTRATIVE LEAVE.**—

1                   (1) IN GENERAL.—The Director shall place on  
2 administrative leave an individual employed by the  
3 Office of Personnel Management if the Director de-  
4 termines, based upon a preponderance of the evi-  
5 dence, that an investigation is required to determine  
6 whether the individual was intentionally involved in  
7 misconduct affecting the integrity of the background  
8 investigations program of the Office of Personnel  
9 Management, including—

10                   (A) falsification of a background investiga-  
11 tion report;

12                   (B) fraud relating to a background inves-  
13 tigation report; or

14                   (C) other serious misconduct that com-  
15 promises the integrity of a background inves-  
16 tigation report.

17                   (2) PERIOD OF ADMINISTRATIVE LEAVE.—An  
18 individual placed on administrative leave under para-  
19 graph (1) shall remain on administrative leave until  
20 such time that the Director determines that the indi-  
21 vidual was not intentionally involved in misconduct  
22 affecting the integrity of the background investiga-  
23 tions program of the Office of Personnel Manage-  
24 ment.

1       (e) PROCEDURES.—The Director shall establish pro-  
2    cedures under which subsections (a) through (d) shall be  
3    carried out, which shall—

4              (1) with respect to employees—

5                  (A) ensure that—

6                      (i) the employee is provided with no-  
7                      tice and opportunity to be heard; and

8                      (ii) the determination whether to ter-  
9                      minate or reinstate the employee is made  
10                     expeditiously; and

11                  (B) be in accordance with chapters 5 and  
12                  75 of title 5, United States Code; and

13              (2) with respect to individuals employed or con-  
14              tracted by persons under contract with the Office of  
15              Personnel Management, shall be carried out in ac-  
16              cordance with section 9.406-3 of title 48, Code of  
17              Federal Regulations, or any successor thereto.

18       (f) MANDATORY DISCLOSURE.—Any covered contractor  
19      shall include a provision requiring the prime contractor  
20      or subcontractor to disclose any misconduct of the type  
21      described under subsections (a) through (d) and any viola-  
22      tion of Federal law to the agency in a timely manner, and  
23      in no event later than 90 days after the date that the mis-  
24      conduct is discovered by the prime contractor or subcon-  
25      tractor.

1       (g) REPORTING.—Not later than 1 year after the  
2 date of enactment of this Act, and annually thereafter,  
3 the Director shall submit to the appropriate congressional  
4 committees a report providing—  
5           (1) the number of individuals terminated under  
6 subsection (a);  
7           (2) the number of individuals debarred under  
8 subsection (b);  
9           (3) the number of individuals suspended under  
10 subsection (c);  
11          (4) the number of individuals placed on admin-  
12 istrative leave under subsection (d); and  
13          (5) details of the misconduct that resulted in  
14 each termination under subsection (a), debarment  
15 under subsection (b), suspension under subsection  
16 (c), and placement on administrative leave under  
17 subsection (d).

18 **SEC. 4. REVIEW AND UPDATE OF CLASSIFIED INFORMA-**  
19 **TION GUIDANCE.**

20       (a) GUIDELINES.—Not later than 180 days after the  
21 date of enactment of this Act, the President shall review  
22 and update guidance for agencies that shall be used to—  
23           (1) determine whether a position requires its  
24 occupant to have a security clearance;

1               (2) implement the guidance provided in para-  
2       graph (1), including quality controls; and

3               (3) not less frequent than every 5 years, review  
4       and, if necessary, revise the designation of a position  
5       as requiring its occupant to have access to classified  
6       information or secure government facilities.

7       (b) REPORTS TO CONGRESS.—Not later than 30 days  
8       after a review under subsection (a)(2), the President shall  
9       submit to the appropriate congressional committees a re-  
10      port on any issues identified in the review, and any up-  
11      dates made, under subsection (a)(2).

12       (c) NO CHANGE IN AUTHORITY.—Nothing in this  
13      section limits or expands the authority of any agency to  
14      designate a position as requiring its occupant to have ac-  
15      cess to classified information or secure government facili-  
16      ties.

17      **SECTION 1. SHORT TITLE.**

18       *This Act may be cited as the “Security Clearance Ac-*  
19       *countability, Reform, and Enhancement Act”.*

20      **SEC. 2. DEFINITIONS.**

21       *In this Act—*

22               (1) the term “agency” has the meaning given the  
23       term in Executive Order 13467 (73 Fed. Reg. 38103);

24               (2) the term “appropriate agency” means—

1                   (A) in the case of a prime contractor for a  
2 covered contract, the agency with which the  
3 prime contractor entered the covered contract; or

4                   (B) in the case of a subcontractor for a cov-  
5 ered contract, any agency on whose behalf the  
6 subcontractor is performing work under the cov-  
7 ered contract;

8                   (3) the term “appropriate congressional commit-  
9 tees” means—

10                  (A) the Committee on Homeland Security  
11 and Governmental Affairs and the Select Com-  
12 mittee on Intelligence of the Senate; and

13                  (B) the Committee on Oversight and Gov-  
14 ernment Reform and the Permanent Select Com-  
15 mittee on Intelligence of the House of Represent-  
16 atives;

17                  (4) the term “background investigation” means  
18 any investigation required for the purpose of deter-  
19 mining the—

20                  (A) eligibility of a covered individual for  
21 logical and physical access to federally controlled  
22 facilities or information systems;

23                  (B) suitability or fitness of a covered indi-  
24 vidual for Federal employment;

1                   (C) *eligibility of a covered individual for*  
2                   *access to classified information or to hold a na-*  
3                   *tional security sensitive position; or*

4                   (D) *fitness of a covered individual to per-*  
5                   *form work for or on behalf of the United States*  
6                   *Government as a contractor employee;*

7                   (5) *the term “covered contract” means a contract*  
8                   *to conduct background investigations—*

9                   (A) *between an agency and a prime con-*  
10                  *tractor;*

11                  (B) *between a prime contractor and a sub-*  
12                  *contractor, if the prime contractor has a contract*  
13                  *with an agency; or*

14                  (C) *between subcontractors, if one of the*  
15                  *subcontractors has a contract with a prime con-*  
16                  *tractor that has a contract with an agency;*

17                  (6) *the term “covered individual” means an in-*  
18                  *dividual who—*

19                  (A) *performs work for or on behalf of an*  
20                  *agency; or*

21                  (B) *seeks to perform work for or on behalf*  
22                  *of an agency;*

23                  (7) *the term “covered misconduct” means mis-*  
24                  *conduct affecting the integrity of a background inves-*  
25                  *tigation conducted by or for an agency with inves-*

1       *tigative authority to conduct background investiga-*  
2       *tions, including—*

3               *(A) falsification of any information relating*  
4               *to a background investigation; or*

5               *(B) other serious misconduct that com-*  
6       *promises the integrity of a background investiga-*  
7       *tion;*

8               *(8) the term “prime contractor” means an indi-*  
9       *vidual who enters into a contract with an agency;*  
10      *and*

11       *(9) the term “subcontractor” means an indi-*  
12      *vidual who has contracted with a prime contractor or*  
13      *with another subcontractor to perform a contract on*  
14      *behalf of an agency.*

15      **SEC. 3. ACCOUNTABILITY OF INDIVIDUALS INVOLVED IN**  
16               **MISCONDUCT AFFECTING THE INTEGRITY OF**  
17               **AGENCY BACKGROUND INVESTIGATIONS.**

18       *(a) MISCONDUCT BY FEDERAL EMPLOYEES.—*

19               *(1) UNFIT FOR FEDERAL EMPLOYMENT.—If an*  
20      *agency determines that an employee of the agency has*  
21      *engaged in covered misconduct, the employee shall be*  
22      *found unfit for Federal employment.*

23               *(2) FITNESS DETERMINATIONS.—An agency shall*  
24      *make a determination under paragraph (1) in ac-*  
25      *cordance with any statutory, regulatory, or internal*

1       *agency procedures applicable to investigating alleged  
2 misconduct by employees of the agency.*

3           (3) *PROHIBITION ON REEMPLOYMENT TO CON-*  
4       *DUCT BACKGROUND INVESTIGATIONS.—If an agency*  
5       *determines under paragraph (1) that an individual is*  
6       *unfit for Federal employment, the individual shall*  
7       *not be appointed to or continue to occupy a position,*  
8       *as an employee of any agency, that requires its occu-*  
9       *pant to perform background investigations.*

10      (b) *MISCONDUCT BY EMPLOYEES UNDER CON-*  
11     *TRACT.—*

12           (1) *INELIGIBILITY FOR PERFORMANCE OF WORK*  
13       *UNDER A COVERED CONTRACT.—If an appropriate*  
14       *agency, prime contractor, or subcontractor determines*  
15       *that an individual performing work under a covered*  
16       *contract has engaged in covered misconduct, the indi-*  
17       *vidual shall be ineligible to perform background in-*  
18       *vestigations under a covered contract.*

19           (2) *MANDATORY DISCLOSURE.—A covered con-*  
20       *tract shall include a provision requiring a prime con-*  
21       *tractor or subcontractor to disclose to each appro-*  
22       *priate agency any allegation of covered misconduct by*  
23       *an employee of the prime contractor or subcontractor*  
24       *not later than 24 hours after the prime contractor or*

1       subcontractor discovers the alleged covered mis-  
2       conduct.

3                     (3) *INVESTIGATION OF COVERED MISCONDUCT.*—

4                     (A) *CONTRACTOR INVESTIGATION.*—A cov-  
5       ered contract shall include a provision requiring  
6       that, not later than 5 business days after the  
7       date on which a prime contractor or subcon-  
8       tractor discloses an allegation under paragraph  
9       (2), the prime contractor or subcontractor shall  
10      refer the allegation of covered misconduct to the  
11      agency for investigation.

12                   (B) *AGENCY INVESTIGATION.*—Nothing in  
13       subparagraph (A) shall be construed to prohibit  
14      an appropriate agency from conducting its own  
15      investigation into an allegation of covered mis-  
16      conduct.

17                   (4) *PROHIBITION ON REEMPLOYMENT TO CON-*  
18      *DUCT BACKGROUND INVESTIGATIONS.*—If an appro-  
19      priate agency determines, based on an investigation  
20      conducted under paragraph (3), that an individual is  
21      ineligible to perform work under a covered contract  
22      under paragraph (1), the individual shall be prohib-  
23      ited from performing background investigations under  
24      any covered contract.

1                   (5) *MODIFICATION OF EXISTING CONTRACTS.*—

2                   *Not later than 30 days after the date of enactment of  
3                   this Act, any covered contract that is in effect and  
4                   was entered into before the date of enactment of this  
5                   Act shall be modified to include the provisions re-  
6                   quired under paragraphs (2) and (3).*

7                   (6) *REPORTING.*—*Not later than 1 year after the date  
8                   of enactment of this Act, and annually thereafter, the Presi-  
9                   dent shall submit to the appropriate congressional commit-  
10                  tees a report providing—*

- 11                   (1) *the number of individuals determined to be—*
- 12                      (A) *unfit for Federal employment under*  
13                      *subsection (a); or*
- 14                      (B) *ineligible to perform work under a cov-*  
15                      *ered contract under subsection (b); and*
- 16                   (2) *details of the covered misconduct that re-*  
17                      *sulted in each determination described in paragraph*  
18                      *(1).*

19                   **SEC. 4. REVIEW AND UPDATE OF POSITION DESIGNATION**20                   **GUIDANCE.**21                   (a) *GUIDELINES.*—

- 22                   (1) *INITIAL REVIEW AND UPDATE OF GUID-  
23                   ANCE.*—*Not later than 180 days after the date of en-  
24                   actment of this Act, the President shall review and,*

1       if appropriate, update the guidance the President  
2       issues to assist agencies in determining—  
3                     (A) position sensitivity designation; and  
4                     (B) the appropriate background investiga-  
5                     tion to initiate for each position designation.

6       (2) **REVIEWS AND REVISIONS OF POSITION DES-  
7       IGNATIONS.**—Not less frequently than every 5 years,  
8       the President, acting through relevant agencies (as de-  
9       termined by the President) and in accordance with  
10      the guidance described in paragraph (1), shall review  
11      and, if necessary, revise the position designation of  
12      positions within agencies.

13      (b) **REPORTS TO CONGRESS.**—Not later than 30 days  
14      after completing a review under subsection (a)(2), the Presi-  
15      dent shall submit to the appropriate congressional commit-  
16      tees a report on—

17                     (1) any issues identified in the review; and  
18                     (2) the number of position designations revised  
19                     as a result of the review.

20      (c) **NO CHANGE IN AUTHORITY.**—Nothing in this sec-  
21      tion limits or expands the authority of any agency to des-  
22      ignate a position as sensitive or as requiring its occupant  
23      to have access to classified information.

Amend the title so as to read: “A bill to strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to

update guidelines for position designation, and for other purposes.”.



**Calendar No. 606**

113<sup>TH</sup> CONGRESS  
2D SESSION  
**S. 1744**

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**A BILL**

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, and for other purposes.

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NOVEMBER 20, 2014

Reported with an amendment and an amendment to the title